



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 5, 1992

Mr. Ronald E. Garner
Assistant Attorney General
Highway Division
P. O. Box 12548
Austin, Texas 78711-2548

OR92-88

Dear Mr. Garner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14903.

The Texas Department of Highways and Public Transportation (the department), which you represent, has received a request for information relating to an accident which occurred on Interstate Highway 10 on August 18, 1991. Specifically, the requestor seeks six categories of information which might help him to reconstruct the accident, including copies of plans for a certain section of the highway, photologs, videotape, certain skid tests, and information regarding rotomilling. You claim that the requested information is excepted from required public disclosure by sections 3(a)(3) and 3(a)(11) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various

political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The department has received notice of Greyhound Lines' claim against the State of Texas for damages arising out of alleged acts and omissions on the part of the state in connection with the accident pursuant to section 101.101 of the Civil Practices and Remedies Code. You have submitted the notice of claim for our review. It asserts that the State of Texas is liable for damages, in part because of the faulty design of the highway. On the basis of this notice of claim, we conclude that litigation may be reasonably anticipated. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the anticipated litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only for the duration of the litigation and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-88.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/mc

Ref.: ID# 14903
ID# 14930
ID# 14978

Enclosures: Documents

cc: Rene Lujan
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